

Exhibit 5-4

19000-1043
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FILED
MADERA SUPERIOR COURT
AUG 28 2012
BONNIE THOMAS CLERK
DEPUTY

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 IN AND FOR THE COUNTY OF MADERA
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11 STEVEN D. BROCKMAN and EDNA C.
12 BROCKMAN, individuals,

13 Plaintiffs,

14 vs.

15 GMAC MORTGAGE, LLC, a Delaware
16 limited liability company; EXECUTIVE
17 TRUSTEE SERVICES, LLC, a Delaware
18 limited liability company; MORTGAGE
19 ELECTRONIC REGISTRATION SYSTEMS,
20 INC., a Delaware corporation; and DOES 1
21 through 100, inclusive,

22 Defendants.

CASE NO. MCV057494

ORDER AFTER HEARING

23 This matter came on regularly for hearing on June 20, 2012, on defendants' motion
24 to dismiss the third and fourth causes of action of the complaint on file herein, for failure to file an
25 amended pleading within the time provided by the court. The motion was not opposed by
26 plaintiffs. The matter was heard in Department 4 of the above-captioned court, Judge Dale J.
27 Blea, presiding. Plaintiffs did not appear at the hearing. Defendants appeared by and through
28 their attorney Alex Sears.

Upon review of the documents on file herein, the court finds that plaintiffs have
failed to file an amended complaint within the period ordered by the court following the court's
order sustaining defendants' demurrer to the third and fourth causes of action of the complaint.

ORDER AFTER HEARING

1 The court finds that plaintiffs have failed to establish good cause for their failure to
2 file the amending complaint within the time provided. Good cause appearing,

3 IT IS HEREBY ORDERED that defendants' motion for dismissal of the third and
4 fourth causes of action of the complaint on file herein, for wrongful foreclosure and unfair
5 business practices, respectively, is GRANTED. Said causes of action are hereby dismissed
6 without leave to amend.

7 A case management conference is set in this matter of August 21, 2012, at 8:30
8 a.m., in Department 4.

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10 August 28, 2012

DALE J. BLEA

Judge of the Superior Court

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FILED
MADERA SUPERIOR COURT
DEC 22 2011
BONNIE THOMAS CLERK
DEPUTY

SUPERIOR COURT OF CALIFORNIA
COUNTY OF MADERA

STEVEN D. BROCKMAN and EDNA C.
BROCKMAN, as individuals,

Plaintiffs,

vs

GMAC MORTGAGE, LLC, a Delaware
limited liability company; EXECUTIVE
TRUSTEE SERVICES, LLC, a Delaware
limited liability company; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC, a Delaware corporation; and DOES 1-
100, inclusive,

Defendants.

Case No.: MCV057494

**[PROPOSED] ORDER ON DEMURRER TO
COMPLAINT**

Date: Monday, December 12, 2011
Time: 8:30 a.m.
Dept.: 4
Judge: Hon. Dale J. Blca

Complaint Filed: September 1, 2011
Trial Date: (not yet set)

The unopposed demurrer of defendants GMAC Mortgage, LLC, Mortgage Electronic
Registration Systems, Inc. and Executive Trustee Services, LLC (together, "Defendants") to the
Complaint came on for hearing in this Court on Monday, December 12, 2011. Alex Sears
appeared for Defendants. There was no appearance for Plaintiffs.

1 Having reviewed and considered the written submissions of the parties and the arguments
2 of counsel at the hearing, and good cause appearing, it is hereby ordered as follows:

3 The contested terms of the contracts alleged in the Complaint are subject to interpretation.
4 Similarly, the recordation of the Deeds of Trust alleged in the Complaint is judicially noticeable,
5 but not the interpretation of the terms of those documents. *People v. H.A.S. Ins. Brokerage*, 184
6 Cal.App.3d 369, 374 (1986); *Love v. Wolf*, 226 Cal.App.2d 378, 403 (1964); *StorMedia Inc. v.*
7 *Superior Court*, 20 Cal.4th 449, 457 (1999). Accordingly, due to the liberal pleading standard
8 governing the Court's acceptance of the allegations of the complaint on demurrer, the demurrer is
9 overruled as to the First Cause of Action for Declaratory Relief and the Second Cause of Action
10 for Breach of Contract

11 The allegations of the Complaint show that section 2923.5 of the Civil Code is not
12 applicable to either of the mortgage loans at issue in this action, because they were not secured by
13 owner-occupied residential real property. Further, the conclusory contention that a sale was
14 "wrongful" is unsupported by factual allegations demonstrating any defect in foreclosure
15 procedure; and the contention that a notice of default "overstated" the amounts actually owed by
16 the Plaintiff is unsupported by factual allegations demonstrating that the stated amount was
17 incorrect. For the aforementioned reasons, the demurrer to the Third Cause of Action for
18 Wrongful Foreclosure is sustained with leave to amend.

19 The Fourth Cause of Action, for Unfair Business Practices under section 17200 of the
20 Business & Professions Code, fails to identify which prong of section 17200 it is based on.
21 However, under the liberal interpretation standards governing demurrers, the Court reads the
22 Fourth Cause of Action as possibly based on either the "unlawful" or "fraudulent" prongs. To the
23 extent it is based on the "unlawful" prong, this claim lacks allegations establishing an underlying
24 predicate violation of law. To the extent it is based on the "fraudulent" prong, the Fourth Cause
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1 of Action fails to allege the elements with particularity. For those reasons, the demurrer to the
2 Fourth Cause of Action for Unfair Business Practices is sustained with leave to amend.

3 Plaintiffs may file their amended complaint, if any, within 10 days of service of the Notice
4 of Entry of Order, subject to section 1013 of the Code of Civil Procedure.

5 IT IS SO ORDERED.

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7 DATED: DE 17 2014

DALE J. BLEA

Judge of the Superior Court

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1 **PROOF OF SERVICE**

2 I, the undersigned, declare that I am over the age of 18 and am not a party to this action. I
3 am employed in the City of San Francisco, California; my business address is Severson &
Werson, One Embarcadero Center, Suite 2600, San Francisco, CA 94111.

4 On the date below I served a copy of the following document(s):

5 **NOTICE OF ENTRY OF ORDER ON DEMURRER TO COMPLAINT**

6 on all interested parties in said case addressed as follows:

7 Michael W. Johnson, Esq.
Johnson & Johnson, LLP

Tel: 949-661-8610
Fax: 949-661-7146

8 31351 Rancho Viego Road, Suite 105
9 San Juan Capistrano, CA 92675

Attorneys for Plaintiff
Steven C. Brockman and Edna Brockman

10 ☒ **(BY MAIL)** By placing the envelope for collection and mailing following our ordinary
11 business practices. I am readily familiar with the firm's practice of collecting and processing
12 correspondence for mailing. On the same day that correspondence is placed for collection and
mailing, it is deposited in the ordinary course of business with the United States Postal Service in
San Francisco, California in sealed envelopes with postage fully prepaid.

13 ☐ **(BY HAND)** By placing the documents in an envelope or package addressed to the persons
14 listed above and providing them to a professional messenger service for delivery.

15 ☐ **(BY FEDERAL EXPRESS)** By depositing copies of the above documents in a box or other
facility regularly maintained by Federal Express with delivery fees paid or provided for.

16 ☐ **(BY FAX)** By use of facsimile machine telephone number (415) 956-0439, I faxed a true
17 copy to the addressee(s) listed above at the facsimile number(s) noted after the party's address.
18 The transmission was reported as complete and without error. The attached transmission report,
which sets forth the date and time for the transmission, was properly issued by the transmitting
facsimile machine.

19 ☐ **(BY ELECTRONIC TRANSMISSION)** By sending a file of the above document(s) via
20 electronic transmission (e-mail) at _____ a.m./p.m. using e-mail address (____@severson.com)
21 to the e-mail address designated for each party identified above. I did not receive, within a
reasonable time after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct.

24 This declaration is executed in San Francisco, California, on January 10, 2012.

25 
26 _____
Isabel P. Kunst